

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	22md3043 (DLC)
IN RE: Acetaminophen - ASD-ADHD	:	22mc3043 (DLC)
Products Liability Litigation	:	
	:	ORDER: CONFERENCE
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DENISE COTE, District Judge:

An initial conference in In Re: Acetaminophen - ASD-ADHD Products Liability Litigation is scheduled for November 17, 2022 at 2:30 P.M. The parties have proposed agendas for the conference. On November 2, Mikal C. Watts, Ashley C. Keller, and W. Mark Lanier submitted a proposal for a leadership structure for plaintiffs' counsel ("Structure") and nominated attorneys to identified positions within that Structure. On November 14, nominees submitted applications. Any objections to the nominations were due November 16 at 12:00 P.M. There having been no objections, it is hereby

ORDERED that the Structure is approved subject to modification as appropriate to meet the needs of the litigation.

IT IS FURTHER ORDERED that the November 2 nominations to positions within the approved Structure are approved for one year, subject to renewal by Court Order.

IT IS FURTHER ORDERED that the following items will compose the agenda for the November 17 conference, subject to further

modification as suggested by the parties or as deemed appropriate by the Court.

1. Introductions of the case by Plaintiffs' Co-Lead Counsel, Retailer Defendants, and then Johnson & Johnson Consumer Inc.
2. Management of Plaintiffs' Leadership Structure
  - a. Modifications to the leadership team proposed on November 2
  - b. Common Fund
    - i. Proposed Common Fund Order
      1. Fees
      2. Tasks
    - ii. Appointment of a Special Master pursuant to Fed. R. Civ. P. 53(a) ("Special Master") to oversee submissions to and disbursements from the Common Fund
3. Defendants' Liaison
  - a. Retailers
  - b. Manufacturer/s
4. Amendments/Objections to the Proposed Direct Filing Orders of November 16, 2022
5. Additional motions to dismiss
  - a. Whether a Master Complaint is necessary or appropriate

- b. Should a stipulation apply the decision of November 14, 2022 regarding preemption to each case filed within the MDL?
- c. Are other motions to dismiss contemplated?
  - i. How many state regimes need to be addressed to cover the major differences in the application of state law?
  - ii. Schedule for the motions
  - iii. The parties are advised that discovery is unlikely to be stayed during the briefing of such motions, but will be given an opportunity to be heard regarding a stay.
- 6. Census of Cases
  - a. Appointment of the Special Master to create and manage a census of cases within the MDL and filed in state court ("Census")
  - b. A database that is quantifiable and searchable
  - c. Cooperation of and Access by Plaintiffs' Counsel and Defense Counsel
  - d. Nomination of the Special Master, Conflict Checks, and Payment
- 7. State Court Cases
  - a. Contact Information for State Court Judges
  - b. Cooperation and coordination with State Court Judges

8. Proposed Label Change
9. Discovery
  - a. Schedule for submission of Proposed Orders
    - i. Confidentiality Order
    - ii. ESI Protocol
    - iii. Preservation Order
    - iv. Coordination Order with State Court Litigation
  - b. Plaintiff Fact Sheets
    - i. Medical Records
    - ii. Proof of Purchase/Use of Acetaminophen
    - iii. Creation of Master Secure Database with access for Plaintiffs and Defendants
  - c. Discovery from Retailers
  - d. Discovery from Manufacturer/s
  - e. Discovery from Third Parties
  - f. Depositions
    - i. Proposals for limits on number of depositions
    - ii. Scheduling protocol: Notice within 7 days of alternate dates that fall within a one week window on either side of the proposed date
    - iii. A witness's deposition taken once for all cases filed within the MDL and in state court
    - iv. Protocols for objections, breaks, and management of disputes

g. Disputes generally

- i. Any party wishing to raise a dispute with the Court must first confer in good faith with the relevant parties in an effort to resolve the dispute.
- ii. If this meet-and-confer process does not resolve the dispute, the party may file a letter, no longer than two pages, explaining the nature of the dispute and requesting a conference.
- iii. Presumption for Telephone Conferences

h. Expert Discovery

- i. Scheduling on Parallel Track with Fact Discovery
- ii. Regulatory Experts
- iii. Science Experts
  1. Schedule for Identification
  2. Schedule for Reports and Depositions
  3. Daubert Motions
  4. Science Day

10. Bellwether Selection

- a. For settlement
- b. For trial
  - i. Assistance from the Special Master
  - ii. Schedule for Bellwether Selection
  - iii. Schedule for Trials

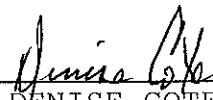
11. Settlement

- a. Management by Magistrate Judge Katharine H. Parker
- b. Schedule for Initial Meetings

12. Engagement with Food and Drug Administration ("FDA")

- a. Joint Interest in FDA Position
- b. Process for Engagement

Dated: New York, New York  
November 16, 2022

  
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DENISE COTE  
United States District Judge